

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE)	
CONFERENCE OF THE NAACP, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	1:13CV658
)	
PATRICK LLOYD MCCRORY, in his)	
official capacity as Governor of North)	
Carolina, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	
LEAGUE OF WOMEN VOTERS OF)	
NORTH CAROLINA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
<i>and</i>)	1:13CV660
)	
LOUIS M. DUKE, <i>et al.</i> ,)	
)	
Plaintiffs-Intervenors,)	
)	
v.)	
)	
THE STATE OF NORTH CAROLINA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	1:13CV861
v.)	
)	
THE STATE OF NORTH CAROLINA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS' JOINT EXHIBIT LIST AND
OBJECTIONS AND COUNTER-DESIGNATIONS TO PLAINTIFFS' JOINT
DESIGNATION OF VIDEO DEPOSITION TESTIMONY**

Defendants, in accordance with Fed. R. Civ. P. 26(a)(3)(B) and the Court's Text Order of November 4, 2015 adopting the Rule 26(f) Report Filed by Plaintiffs (D.E. 364 in Civil Action No. 1:13-cv-861), hereby submit their objections to Plaintiffs' Joint Exhibit List and their objections and counter-designations to the Joint Designation of Video Deposition Testimony Plaintiffs filed with the Court on January 15, 2016:¹

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' JOINT EXHIBIT LIST

Defendants' objections to Plaintiffs' Joint Exhibit List (D.E. 384-4 in Civil Action No. 1:13-cv-861) are attached as Exhibit 1.

**DEFENDANTS' OBJECTIONS AND COUNTER-DESIGNATIONS TO PLAINTIFFS'
JOINT DESIGNATION OF VIDEO DEPOSITION TESTIMONY**

With the exception of the designations and counter-designations provided for the video deposition of Marci Andino, who resides in the state of South Carolina, Defendants object to Plaintiffs' presentation of witness testimony by deposition designation because (1) there has been no showing by Plaintiffs that the witnesses whose testimony has been designated by Plaintiffs are unavailable to testify at the trial set to begin on January 25, 2016 and (2) Defendants understood the Court to prefer the presentation of testimony during trial at this stage of the proceedings in this matter rather than through the submission of additional deposition designations.

¹ As permitted by Fed. R. Civ. P. 26(a)(3)(B), Defendants reserve the right to raise objections to any of Plaintiffs' proposed exhibits or designations of deposition testimony under Fed. R. Evid. 402 and 403 at trial.

To the extent the Court permits Plaintiffs to submit additional witness testimony by deposition designation, Defendants submit the following objections and counter-designations to Plaintiffs' Joint Designation of Video Deposition Testimony (D.E. 384-2 in Civil Action No. 1:13-cv-861). The name of each deponent for whom Plaintiffs provided deposition designations, Defendants' counter-designations and objections to the testimony designated for each witness, and, where necessary, a summary the key points and relevancy of each witnesses' testimony, are provided below.

Defendants will file with the Court via a separate notice of filing a copy of the condensed transcript of the depositions of each witness for whom Defendants are providing counter-designations along with both Plaintiffs' designations and Defendants' counter-designations.

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF MARCI ANDINO**

Ms. Andino is the Executive Director of the South Carolina State Election Commission. In the portions of her testimony designated by both Plaintiffs and Defendants, Ms. Andino testifies that: (1) in 2014, during the first statewide general election in South Carolina in which the photo ID requirement was implemented, the implementation was: (a) "very successful," (b) very few people showed up without an ID, and (c) "photo ID turned out to be really a nonevent in South Carolina"; (2) only "a little over a hundred" people showed up to vote without a photo ID during the statewide general election in 2014; (3) she is not aware of a single instance where a reasonable impediment affidavit was challenged or was not counted; (4) she is not aware of any

complaints from voters who wanted to cast a reasonable impediment ballot but they were unable to do so because of poll worker error; (5) the implementation of the reasonable impediment provision went well in South Carolina; (6) she is not aware of any claims that a voter was lying on a reasonable impediment form; (7) a voter who possesses a valid photo ID but does not bring it to the polls is not eligible to sign a reasonable impediment declaration; (8) it is “highly unlikely” that counties in South Carolina tracked a reasonable impediment ballot as a provisional ballot for some other purpose in 2014; (9) the budget for implementation of photo ID in South Carolina was \$635,000.00, which included money to purchase camera equipment and printers to produce voter registration photo ID cards; and (10) the implementation of the photo ID law in South Carolina, which went into effect on January 1, 2013, did not begin until after the D.C. District Court issued its order in October 2012.

Defendants counter-designate the following portions of Ms. Andino’s deposition:

Deposition Counter Designations for Marci Andino January 8, 2016			
BEG PAGE	BEG LINE	END PAGE	END LINE
6	17	6	24
7	12	7	24
24	6	25	4
37	19	39	1
48	5	48	23
49	1	49	25
50	1	50	13

54	7	54	19
55	9	5	18
57	20	58	10
86	4	86	24
94	17	94	21
114	6	115	1
126	12	126	21
131	25	132	9
132	8	132	17
133	23	124	9
146	13	146	25
147	1	147	21
148	16	149	5

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF CHARLOTTE BOYD-MALETTE**

Ms. Boyd-Malette's deposition was taken on May 19, 2015 and represents her best recollections as of that date. Following Ms. Boyd-Malette's deposition, Plaintiffs deposed DMV Commissioner Kelly Thomas. Mr. Thomas's deposition showed that several policies and procedures discussed in Ms. Boyd-Malette deposition have since been modified.

Defendants counter-designate the following portions of Ms. Boyd-Malette's deposition:

Deposition Counter Designations for Charlotte Boyd-Malette
May 19, 2015

BEG PAGE	BEG LINE	END PAGE	END LINE
37	6	37	11
101	3	101	7
102	13	102	15
103	3	104	9
137	5	138	16
150	8	150	10
187	19	187	19
206	25	207	1
207	5	207	14
213	12	213	19

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF CARNELL BROWN**

Mr. Brown owned a vehicle before he was convicted of DWI. He has “ready access” to a vehicle owned by his brother. On two occasions, Mr. Brown obtained a photo identification card from DMV. He used to the card to apply for food stamps through the Department of Social Services. Counsel for the Defendants advised Mr. Brown this his photo ID was expired and that he would not be obligated to pay a fee if he applied for a new identification card to vote at DMV even though counsel for the Defendants met Mr. Brown for the first time at his deposition. Counsel for the United

States had met Mr. Brown before his deposition, had reviewed Mr. Brown's expired photo ID card, and did not advise Mr. Brown that it was expired or that Mr. Brown could apply for a non-fee photo ID to vote. Even if Mr. Brown did not obtain a new photo ID, he could still use it to vote in 2016 because his deposition testimony shows it would not be expired more than four years at the time of the 2016 election. *See* SL 2015-103, § 8(a). Because it had not been enacted at the time of his deposition, Mr. Brown's deposition contained no testimony regarding the impact of the reasonable impediment provision on his ability to vote in any future election.

Defendants counter-designate the following portions of Mr. Brown's deposition:

Deposition Counter Designations for Carnell Brown April 24, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
25	12	25	22
35	9	35	21
36	4	36	7
36	12	36	12
36	18	36	21
37	1	37	11
37	15	37	25
38	2	38	3
40	1	40	6
40	8	40	8
40	13	41	1

42	13	42	23
44	15	44	24
45	20	46	3
46	23	47	18
52	6	52	10

**DEFENDANTS' JOINT STATEMENT REGARDING DEPOSITION
TESTIMONY OF TRACY BUCHOLTZ**

Ms. Bucholtz's deposition was taken on May 20, 2015. The designated testimony represents her understanding as of the date of her deposition. Plaintiffs subsequently deposed Commissioner Kelly Thomas on January 13, 2016 pursuant to a Rule 30(b)(6) deposition notice issued to the N.C. Department of Transportation. In his deposition, Mr. Thomas's explained that several policies and procedures of NC DMV that are discussed in Plaintiffs' designations have been changed or modified since May 2015.

Beyond the general objections stated above, Defendants have no objections or counter-designations to the deposition designations submitted by Plaintiffs for Tracy Bucholtz.

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF CAROLYN COLEMAN**

Ms. Coleman testified that the only people she can identify by name who she believes will be unable to vote due to the photo ID requirement are Ms. Jessie Walton and Ms. Marie Sims. Both Ms. Walton and Ms. Sims are in their 80s. With regard to Ms. Walton, Ms. Coleman testified that "she'd probably be able to" cast a ballot in 2016 if she had transportation to the polls. As for Ms. Sims, Ms. Coleman does not know if

she has a driver's license, and she also does not know if Ms. Sims would be able to vote if she had a ride to the polling place.

Defendants counter-designate the following portions of Ms. Coleman's deposition:

Deposition Counter Designations for Carolyn Coleman January 8, 2016			
BEG PAGE	BEG LINE	END PAGE	END LINE
11	8	11	12
12	16	12	25
13	1	13	12
17	4	17	5
20	10	20	13

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF RANDY DISHONG**

Defendants counter-designate the following portions of Mr. Dishong's deposition:

Deposition Counter Designations for Randy Dishong January 22, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
40	18	41	2
41	8	41	22
57	1	57	16
57	24	58	17
74	18	75	9
75	18	75	21
81	16	82	14

82	24	83	8
86	21	87	9
120	6	120	14

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF ROSANELL EATON**

Ms. Eaton has a long and admirable history of assisting hundreds of individuals in voting in North Carolina. Unfortunately, when Ms. Eaton sought to renew her driver's license in 2015 following her ninety-fourth birthday, she had to make several trips to Social Security Administration and DMV offices to obtain a social security card and license that matched the name on her voter registration record. Ms. Eaton's testimony shows that the majority of the difficulties she encountered in this process were with the federal Social Security Administration. In any event, Ms. Eaton was ultimately able to obtain a driver's license that matched the name under which she is registered to vote. She testified that she comfortable that she will be able to use the driver's license she obtained to vote in 2016. Ms. Eaton testified that she did not experience any problems voting in 2014 as a result of VIVA and, despite her continued involvement in helping people vote, did not personally know of anyone else who experienced problems voting in 2014 because of the law.

Defendants counter-designate the following portions of Ms. Eaton's deposition:

Deposition Counter Designations for Rosanell Eaton March 12, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
28	3	29	11
40	10	41	4
49	24	50	8
57	1	57	6

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF SARAH FOSTER**

Sarah Foster is a life-long resident of Perquimans County. At the time of her deposition in May 2015, Ms. Foster did not have a photo ID acceptable to vote under VIVA. Although she could not provide a date, “several years” before her deposition, Mr. Foster attempted to obtain a photo ID using her social security card and her birth certificate but could not obtain one because the name and birthdate on her birth certificate were not correct. In addition to having a social security card, Ms. Foster has a photo ID from the public housing complex where she lives and has a telephone and a bank account, both of which are in her (correct) name. She receives a bill for the telephone and her bank statements at her home address. Ms. Foster’s name is also correctly listed on her children’s birth certificates to which she has access. Ms. Foster has not attempted to get a photo ID for the purpose of voting since VIVA was passed.

Ms. Foster provided no testimony regarding the impact of the reasonable impediment provision on her ability to vote in 2016. However, based on the testimony at

her deposition, there is no evidence that she could not vote by submitting a reasonable impediment declaration in the event she were unable to obtain a photo ID from DMV.

Defendants counter-designate the following portions of Ms. Foster’s deposition:

Deposition Counter Designations for Sarah Foster May 15, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
27	12	28	3
31	18	33	6
40	14	40	20
43	3	43	16
47	19	48	9
48	24	49	16
57	17	58	11
59	19	60	11

**DEFENDANTS’ JOINT COUNTER- DESIGNATIONS OF DEPOSITION
TESTIMONY OF RICHARD HOARD**

Mr. Hoard provided no testimony regarding the impact of the reasonable impediment provision. Mr. Hoard testified that, in his experience, even if a person does not have any of the first-, second- or third-tier documents, that it is still possible to go to a DMV office and work with the DMV person to try to establish that person's identity. He also acknowledged that a registered voter who lacks photo ID may still exercise his franchise by casting an absentee ballot.

Defendants counter-designate the following portions of Mr. Hoard’s deposition:

Deposition Counter Designations for Richard Hoard May 15, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
31	6	31	12
38	7	38	22
41	18	41	25
44	24	44	25
45	1	45	22

**DEFENDANTS' JOINT OBJECTIONS AND COUNTER-DESIGNATIONS OF
DEPOSITION TESTIMONY OF SYLVIA KENT**

The bulk of the deposition testimony designated by Plaintiffs for Ms. Kent consists of inadmissible hearsay statements that Ms. Kent contends were made to her by poll workers, DMV employees, employees at a Register of Deeds office, and her family members. Accordingly, Defendants object to Plaintiffs' designations of her testimony to the extent any of these hearsay statements are being offered by Plaintiffs for the truth of the matter asserted.

Although Ms. Kent testified that, as of her deposition in June 2015, she had been unable to obtain photo IDs for her sisters, she was confident that she would be able to obtain an acceptable photo ID for them in time for the 2016 elections. Because it had not been enacted at the time of her deposition, Ms. Kent provided no testimony regarding whether the reasonable impediment provision might allow her sisters to vote in the event they are unable to obtain a photo ID.

Defendants counter-designate the following portions of Ms. Kent's deposition:

Deposition Counter Designations for Sylvia Kent June 5, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
40	4	41	5
43	2	43	6
43	12	47	10
48	14	48	23
51	3	51	10

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF PORTIA MANLEY**

Defendants counter-designate the following portions of Ms. Manley's deposition:

Deposition Counter Designations for Portia Manley May 21, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
26	11	26	18
37	6	37	15
101	3	101	20
104	2	104	11

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF ALONZO PHILLIPS**

Mr. Phillips last attempted to obtain a photo ID from NC DMV 10 years before his deposition. Mr. Phillips testified that he was unable to obtain a photo ID at that time because his first name was spelled "Alonz" rather than "Alonzo" as his name appears on his birth certificate. Mr. Phillips testified that he knew that NC DMV has a mobile unit

that visits Scotland Neck, the town where he lives, each month and that he is able to walk to that unit. Mr. Phillips testified that he intended to visit that unit to obtain a photo ID for voting the month after his deposition. A search of the State Board of Elections Voter Registration Database shows that Mr. Phillips is now listed as a “DMV Customer” which indicates that he successfully obtained a photo ID. Because it had not been passed at the time of his deposition, Mr. Phillips deposition contained no testimony regarding his ability to use a reasonable impediment declaration to vote in the event he was unable to obtain a photo ID.

Defendants counter-designate the following portions of Mr. Phillips’s deposition:

Deposition Counter Designations for Alonzo Phillips April 22, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
8	12	9	2
23	1	23	19
25	6	25	25
30	7	31	4
34	2	37	5
42	22	43	25
46	6	47	19
49	10	49	19
52	2	53	21
54	17	55	2

**DEFENDANTS’ JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF HILDA ROUSE**

Ms. Rouse testified about her attempts to help a single voter in Greene County obtain a photo ID for voting. Although the voter Ms. Rouse was assisting initially had trouble obtaining an ID with the documents she had, Ms. Rouse testified that the voter was ultimately successful in obtaining a photo ID and did not have any concerns about using it to vote after receiving it. Despite some frustrations with her experience, Ms. Rouse agreed that the DMV representative who assisted her and the voter was “generally helpful.” Because it had not yet been enacted, Ms. Rouse’s deposition did not include any testimony regarding the effect of the reasonable impediment provision on the ability of voters like the one she assisted to vote if they are unable to obtain a photo ID.

Defendants counter-designate the following portions of Ms. Rouse’s deposition:

Deposition Counter Designations for Hilda Rouse June 1, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
14	19	15	1
16	25	17	7
21	17	22	19

**DEFENDANTS’ JOINT OBJECTIONS AND COUNTER-DESIGNATIONS OF
DEPOSITION TESTIMONY OF MARIA SANCHEZ**

Ms. Sanchez testified about difficulty she had in renewing her driver’s license at a DMV office in Carrboro in 2007. Her difficulty in renewing her license resulted from the fact that Ms. Sanchez’s name on her driver’s license did not match the name on the

passport she presented as proof of her identification to renew her driver's license. Ms. Sanchez was ultimately able to renew her license by completing a name change form available at the DMV office.

At the time of her deposition, Ms. Sanchez was registered to vote under her married name which she no longer uses and that is different from the name on the driver's license she renewed in 2007. Ms. Sanchez stated that she intended to update her voter registration to match the name on her driver's license to ensure that she would have no trouble voting in 2016 but acknowledged that she had never been told by anyone working for any board of elections that the name on her driver's license had to exactly match the name on her voter registration in her for her to vote.

Defendants object to the following designations of Ms. Sanchez's testimony by Plaintiffs where she describes alleged statements made to her by DMV employees on the grounds that it constitutes inadmissible hearsay if offered for the truth of the matter asserted: 23:18 – 25:7 and 31:17 – 36:21. Defendants further object to Plaintiffs' designations of Ms. Sanchez's testimony regarding the implications from her experience with DMV in 2007 on the ability of Hispanic or Latino voters to obtain a photo ID because this testimony constitutes improper opinion testimony and there is inadequate foundation for it: 39:7 – 40:16 and 43:10 – 44:13.

Defendants counter-designate the following portions of Ms. Sanchez's deposition:

Deposition Counter Designations for Maria Sanchez May 5, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
47	5	49	25
51	8	51	24
53	11	54	10
54	12	55	17

**DEFENDANTS' STATEMENT REGARDING DEPOSITION TESTIMONY OF
KELLY THOMAS**

Beyond the general objections stated above, Defendants have no objections or counter-designations to the deposition designations submitted by Plaintiffs for Kelly Thomas.

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF CARLA THORPE**

Defendants counter-designate the following portions of Ms. Thorpe's deposition:

Deposition Counter Designations for Carla Thorpe February 6, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
75	14	75	22

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF VADIM VASHCHENKO**

Defendants counter-designate the following portions of Mr. Vashchenko's deposition:

Deposition Counter Designations for Vadim Vashchenko February 6, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
90	2	90	22

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF BARBARA WEBB**

Defendants counter-designate the following portions of Ms. Webb's deposition:

Deposition Counter Designations for Barbara Webb January 23, 2015			
BEG PAGE	BEG LINE	END PAGE	END LINE
27	25	28	8
32	5	32	19
32	23	33	7
54	19	55	4
55	15	55	23
56	5	56	11
79	10	79	14
180	4	181	19
184	6	184	14
196	5	197	8

198	22	199	6
265	4	265	8

**DEFENDANTS' JOINT COUNTER-DESIGNATIONS OF DEPOSITION
TESTIMONY OF ASHLEY LASHER**

Ms. Lasher cannot identify, by name, any person who is unable to vote because of the Reasonable Impediment provision, and she has no information about any specific person's reaction to the Reasonable Impediment form. Ms. Lasher is not a literacy expert, nor is she an expert in any other field. In her job, she does not assess the difficulty of forms that may be encountered by low-literacy individuals. Ms. Lasher has not read the photo ID statute or the Reasonable Impediment provision. Ms. Lasher acknowledges that a person who encounters the Reasonable Impediment form is a registered voter who has previously successfully navigated the voter registration process.

Defendants counter-designate the following portions of Mr. Lasher's deposition:

Deposition Counter Designations for Ashley Lasher January 18, 2016			
BEG PAGE	BEG LINE	END PAGE	END LINE
11	20	11	20
12	14	12	18
14	2	14	4
14	9	14	15
20	9	20	25
23	7	23	25
24	1	24	3

25	2	25	5
26	7	26	12
33	17	33	21
34	4	34	8
36	10	36	16
38	18	38	25
39	1	39	12
41	16	41	20
62	25		
63	1	63	3
65	2	65	4
67	24	67	25
68	1	68	3
68	9	68	10
70	1	70	2
73	7	73	15
74	13	74	24
75	10	75	16

This the 22nd day of January, 2016.

NORTH CAROLINA DEPARTMENT OF
JUSTICE

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*appearing pursuant to Local Rule 83.1(d)

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day served the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' JOINT EXHIBIT LIST AND OBJECTIONS AND COUNTER-DESIGNATIONS TO PLAINTIFFS' JOINT DESIGNATION OF VIDEO DEPOSITION TESTIMONY** upon the following persons by email to counsel for the parties as set forth below:

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This the 22nd day of January 2016.

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/s/ Thomas A. Farr

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